

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1050

Introduced by Assembly Member Ma

February 27, 2009

An act to amend Section 3042 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Child custody: preferences of child.

Existing law requires the family court, if a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, to consider and give due weight to the wishes of the child in making an order granting or modifying custody.

This bill would require the family court to consider and give due weight to the wishes of a child in making an order granting or modifying custody *or visitation*, if the child is of sufficient age and capacity to form an intelligent preference as to custody or visitation. *The bill would require the court to permit a child who is 14 years of age or older to address the court regarding custody or visitation unless the court determines that doing so is not in the child's best interests, and, in that case, the bill would require the court to make that finding on the record. The bill would require the court to provide alternative means of obtaining information regarding the child's preferences if the court precludes the calling of a child as a witness. The bill would require the Judicial Council, no later than January 1, 2012, to promulgate a rule*

of court establishing procedures for the examination of a child witness, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3042 of the Family Code is amended to
2 read:

3 3042. (a) If a child is of sufficient age and capacity to reason
4 so as to form an intelligent preference as to custody or visitation,
5 the court shall consider, and give due weight to, the wishes of the
6 child in making an order granting or modifying ~~custody,~~
7 ~~particularly if the health, safety, or welfare of the child is at issue.~~
8 *custody or visitation.*

9 (b) In addition to the requirements of subdivision (b) of Section
10 765 of the Evidence Code, the court shall control the examination
11 of a child witness so as to protect the best interests of the child.
12 ~~The court may preclude the calling of the child as a witness if the~~
13 ~~best interests of the child so dictate and may provide alternative~~
14 ~~means of obtaining information regarding the child's preferences.~~

15 (c) *If the child is 14 years of age or older and wishes to address*
16 *the court regarding custody or visitation, the child shall be*
17 *permitted to do so, unless the court determines that doing so is*
18 *not in the child's best interests. In that case, the court shall make*
19 *that finding on the record.*

20 (d) *Nothing in this section shall be interpreted to prevent a child*
21 *who is less than 14 years of age from addressing the court*
22 *regarding custody or visitation, if the court determines that is*
23 *appropriate pursuant to the child's best interest.*

24 (e) *If the court precludes the calling of a child as a witness, the*
25 *court shall provide alternative means of obtaining information*
26 *regarding the child's preferences.*

27 (f) *Nothing in this section shall be construed to require a child*
28 *to express to the court his or her preference as to custody or*
29 *visitation.*

30 (g) *To assist the court in determining whether a child wishes*
31 *to express his or her preference as to custody or visitation to the*
32 *court, a minor's counsel, an evaluator, an investigator, or a*
33 *mediator who provides recommendations to the judge pursuant to*

1 *Section 3183 shall indicate to the judge that the child wishes to*
2 *address the court, or the judge may make that inquiry in the*
3 *absence of that request. A party or a party's attorney may also*
4 *indicate to the judge that the child wishes to address the court or*
5 *judge.*

6 *(h) The Judicial Council shall, no later than January 1, 2012,*
7 *promulgate a rule of court establishing procedures for the*
8 *examination of a child witness, and include guidelines on methods*
9 *other than direct testimony for obtaining information from a child*
10 *on his or her preferences.*